

COMMONWEALTH OF MASSACHUSETTS

IN THE MATTER OF)	BROWNFIELDS COVENANT
BOXER REALTY REDEVELOPMENT, LLC)	NOT TO SUE AGREEMENT
CHAMPION CITY RECOVERY, LLC)	
NEW ENGLAND WASTE, LLC)	RTNs 4-16138, 4-16152
)	and 4-16272

I. STATEMENT OF PURPOSE

A. This Brownfields Covenant Not to Sue Agreement (this "Agreement") is made and entered into by and between the Office of the Attorney General (the "OAG"), on behalf of the Commonwealth of Massachusetts (the "Commonwealth") and Boxer Realty Redevelopment, LLC ("Boxer"), Champion City Recovery, LLC ("Champion") and New England Waste, LLC ("New England") (hereinafter collectively referred to as the "Parties").

B. This Agreement is entered into pursuant to the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, as amended, Massachusetts General Laws, Chapter 21E ("G.L. c. 21E") and the Massachusetts Contingency Plan, 310 CMR 40.0000, (the "MCP") and involves the remediation and redevelopment of 138 Wilder Street, Brockton, MA (the "Champion City Project").

C. It is the intent of the Parties entering into this Agreement to set forth herein their respective duties, obligations and understanding so that the Champion City Project can contribute to the physical and economic revitalization of an area of Brockton, MA. To that end, the Parties hereby agree that this Agreement, pursuant to G.L. c. 21E, § 3A(j)(3), addresses potential claims by the Commonwealth as to Boxer, Champion and New England and is predicated upon Boxer's, Champion's and New England's compliance with the terms and conditions of this Agreement and resolves potential claims by third parties for contribution, response action costs or property damage pursuant to G.L. c. 21E, §§ 4 and 5 or for property damage under common law, except for liability arising under a contract.

D. The Parties agree that Boxer's, Champion's and New England's ability to conduct the Champion City Project, as proposed herein, is contingent upon independent approval processes of other departments, agencies and instrumentalities of the federal, state and local governments. Nothing in this Agreement should be construed as an endorsement by the OAG of the proposed project for such approval processes.

E. The Commonwealth believes that this Agreement is fair, consistent with G.L. c. 21E and in the public interest, and has entered into this Agreement to contribute to the economic and physical revitalization of an area of Brockton, MA.

II. THE PARTIES

A. The OAG is a duly constituted agency of the Commonwealth of Massachusetts charged with the legal representation of the Commonwealth and maintains offices at 200 Portland Street, Boston, Massachusetts. Included within the OAG's authority is the authority to enter into Brownfields Covenant Not to Sue Agreements pursuant to G.L. c. 21E, § 3A(j)(3), which provides liability relief under G.L. c. 21E, as amended.

B. Boxer Realty Redevelopment, LLC, Champion City Recovery, LLC and New England Waste, LLC, are limited liability corporations, existing under the general laws of the Commonwealth of Massachusetts, with offices located at 1093 North Montello Street, Brockton, MA. In accordance with this Agreement, Boxer, Champion and New England shall undertake the Champion City Project as discussed in Section IV, Paragraph A, subparagraph 3, below.

III. STATEMENT OF FACT AND LAW

A. The Commonwealth enters into this Agreement pursuant to its authority under G.L. c. 21E, § 3A(j)(3) and 940 CMR 23.00: Brownfields Covenant Not to Sue Agreements.

B. Unless otherwise expressly provided herein, terms used in this Agreement, which are defined in 940 CMR 23.00, *et seq.*, shall have the meaning assigned to them under such regulations. Terms not defined in 940 CMR 23.00, *et seq.*, but defined elsewhere under G.L. c. 21E and the MCP, shall have the meaning assigned to them under G.L. c. 21E and the MCP.

C. The Property is comprised of five parcels, identified as Plot 6, Plot 8, Plot 8-i, Plot 16 and Plot 19 of the Map of the Assessors of the City of Brockton located at 138 Wilder Street, Brockton, MA, and as well as the property at 40 Means Avenue, Brockton, identified as Plot 6, and, in total, consists of approximately 10.82 acres and the Committed Lease Area described in Exhibit I, consisting of 53,164 sq. ft. (the "Property"). The Property was most recently used by the demolition contractor, Hercules Building & Wrecking, Inc. The Property abuts the land of the Town of Avon to the north, the Massachusetts Bay Transit Authority rail line to the east, and the property formerly known as Quinn Freight, south of the Property. A description of the Property is attached hereto and incorporated into this Agreement as Exhibit I.

D. The Department of Environmental Protection ("DEP") has assigned release tracking numbers ("RTNs") 4-16138, 4-16152 and 4-16272 to disposal sites for the releases of oil and/or hazardous material released on the Property. RTN 4-16138 is associated with petroleum hydrocarbons reported in a groundwater sample obtained from a groundwater monitoring well on March 13, 2001. RTN 4-16152 is associated with lead reported in groundwater samples obtained from two groundwater monitoring wells on March 13, 2001. RTN 4-16272 is associated with naphthalene, lead and polynuclear aromatic hydrocarbons ("PAHs") being reported in soil samples obtained from two soil borings on February 8, 2001. Subsequent soil sampling in the vicinity of these two borings has confirmed that the soil in this area contains lead and PAHs in

excess of the MCP Method L Soil Cleanup Standards. For purposes of this Agreement, the releases of oil and/or hazardous material assigned RTNs 4-16138, 4-16152 and 4-16272 constitute the "Site," as further defined in 310 CMR 40.0006.

E. G.L. c. 21E, § 2(e)(1) conditionally exempts tenants from operator liability. To maintain this so-called Tenant Exemption, an eligible tenant must satisfy criteria established in § 2(e)(1). Boxer, Champion and New England assert that they have a leasehold interest in land formerly known as the Quinn Freight property and owned by Philip D. D'Angelo, Trustee, CDA Realty Trust u/d/t dated January 11, 1994, recorded with the Plymouth County Registry of Deeds at Book 12760, Page 305, which property is numbered 1093 North Montello Street, Brockton, MA (the "the Quinn Freight property"). This Lease is dated February 28, 2001 and is related to the Champion City Project. DEP was notified of the release of oil and/or hazardous material with respect to RTN 4-000048 on October 1, 1993 on the Quinn Freight property and DEP assigned RTN 4-000048 to that release. Boxer, Champion and New England assert that they satisfy the eligible tenant criteria and continue to maintain the exemption, thereby satisfying the Tenant Exemption criteria for this release. The release described in this Paragraph is not to be included in the "Site," as defined in Section III, Paragraph D, above.

IV. COMMITMENTS AND OBLIGATIONS

NOW THEREFORE, in consideration of the representations made and promises exchanged by and between the Parties, each of them does hereby covenant and agree to the terms and conditions which follow.

A. REPRESENTATIONS AND COMMITMENTS BY BOXER, CHAMPION AND NEW ENGLAND

1. Boxer, Champion and New England represent to the best of their knowledge and as of the date of this Agreement that they are not affiliated with a person with potential liability for the Site pursuant to G.L. c. 21E, except as set forth below. Thus, Boxer, Champion and New England represent that they are Eligible Persons because they did not cause or contribute to the release, did not own or operate the Site at the time of the release and would not otherwise have liability pursuant to clauses (2) to (5), inclusive, of paragraph (a) of section 5 of G.L. c. 21E. Boxer, Champion and New England represent that they are not subject to any outstanding administrative or judicial enforcement action arising under applicable federal, state or local law or regulation relating to the Site. With respect to the Site, Boxer, Champion and New England are in compliance with the MCP. Boxer, Champion and New England also represent, and, for the purposes of this Agreement, the Commonwealth relies upon those representations, that Boxer's, Champion's and New England's involvement with the Site have been limited to the following:

- a. Evaluating the Property for purposes of acquiring:

- b. Negotiating to acquire the Property; and
- c. Communicating with the Commonwealth and local authorities with respect to the design and planning of improvement projects and various permitting issues with respect to the Property.

2. Boxer, Champion and New England represent that none of the activities listed in Section IV, Paragraph A, subparagraph 1., has caused or contributed to the release or threatened release of a oil and/or hazardous material at the Site under G.L. c. 21E.

3. Boxer, Champion and New England agree to the following terms and conditions:

- a. Cleanup:
 - i. Boxer, Champion and New England shall achieve and maintain Permanent Solution(s) at the Site;
 - ii. Within 90 days of taking title to the Property, Boxer, Champion and New England shall also remove two (2) piles of construction debris identified as 1) "Plateau of Fill" and 2) "Pile of Brick, Broken Concrete, Steel Pipe, Building Rubble" on the Existing Conditions Plan, sheet number MBTA-3 dated 11-30-2000 (last revised 09-27-2001), attached hereto and incorporated into this Agreement as Exhibit 2. Boxer, Champion and New England shall remove this material for proper disposal, recycling, or re-use in accordance with all applicable local, state and federal laws and regulations;
 - iii. Boxer, Champion and New England shall cooperate fully with DEP. To cooperate fully means:
 - (A) including, without limitation, providing prompt and reasonable access to the Property to DEP for any purpose consistent with G.L. c. 21E and the MCP;
 - (B) complying with the release notification provisions established by G.L. c. 21E and the MCP;
 - (C) responding in a timely manner to any request made by the DEP or OAG to produce information as required pursuant to G.L. c. 21E;
 - (D) to the extent necessary (1) preventing the exposure of people to oil and/or hazardous material by fencing or otherwise preventing access to the Property; and (2) to containing any further release or threat of release of oil and/or hazardous material from a structure or container, upon obtaining knowledge of a release or threat of release

of oil and/or hazardous material; and

(E) conducting response actions at the Site in accordance with the G.L. c 21E, the standard of care defined therein, and the MCP.

iv. Boxer, Champion and New England and any Subsequent Owners and/or Operators shall not permit Hercules Building Wrecking Co., Inc., Harold E. Monsini, Sr., individually and as Trustee of the HEM Realty Trust, to conduct any environmental management responsibilities at the Property.

b. Redevelopment: Boxer, Champion and New England shall construct a permitted facility to process construction and demolition debris that will be sorted, recycled and transferred from the facility for proper disposal, recycling, or re-use in accordance with all applicable local, state and federal laws and regulations. Boxer, Champion and New England will use best efforts to create approximately sixty (60) new jobs within the next twenty-four to thirty-six months. A copy of DEP's Final Permit Decision, Application for: BWPSSW05, Authorization to Construct, Construction and Demolition Debris Facility dated June 7, 2002 is attached hereto and incorporated into this Agreement as Exhibit 3.

B. THE BROWNFIELDS COVENANT NOT TO SUE

1. Boxer, Champion and New England

In consideration of the Representations and Commitments by Boxer, Champion and New England set forth in Section IV, Paragraph A of this Agreement, and subject to Boxer, Champion and New England's compliance with the terms and conditions of this Agreement and the Termination for Cause provisions, described below in Section IV, Paragraph B, subparagraph 5, the Commonwealth covenants not to sue Boxer, Champion and New England, pursuant to G.L. c. 21E, for response action costs, contribution, natural resource damages or injunctive relief for the Matters Addressed at the Property Addressed by this Agreement. This Agreement shall not affect any liability established by contract. This Covenant shall vest on the effective date of this Agreement as defined in Section IV, Paragraph D, subparagraph 5, below. For purposes of this Agreement, the Property Addressed shall be the Site as defined in Section III, Paragraph E, and the Matters Addressed shall be defined as the release(s) of oil and/or hazardous material at the Site which are fully described and delineated in the Response Action Outcome Statements ("RAOs") submitted to DEP with respect to RTNs 4-16138, 4-16152 and 4-16272, so long as the response actions upon which the RAOs rely meet the Standard of Care in effect as of the time of submittal of the RAOs.

2. Applicability of the Covenant to Subsequent Owners and/or Operators

The Commonwealth also covenants not to sue Eligible Persons who are successors, assigns, lessees or licensees of the real property interests of Boxer, Champion and

New England, or who are lessees or licensees of its successors and assigns (hereinafter the "Subsequent Owners and/or Operators") having rights in the Property for which Boxer, Champion and New England receives a covenant herein, with respect to the Matters Addressed at the Property Addressed, as described in Section IV, Paragraph B, subparagraph 1, above. This liability relief is applicable to such Subsequent Owner and/or Operator and shall have the same scope and extent as the liability relief being granted to Boxer, Champion and New England in this Agreement, and shall be subject to the same terms and conditions as those that apply to Boxer, Champion and New England.

3. Duration of the Agreement

This Agreement shall be in effect unless and until the statutory protections available to Boxer, Champion and New England or Subsequent Owners and/or Operators pursuant to G.L. c.21E, §5, are otherwise in effect. For purposes of the Site, such statutory protections will be effective when Boxer, Champion and New England shall either achieve and maintain, or arrange for the achievement and maintenance of, either Permanent Solutions or a Remedy Operation Status at the Site in accordance with G.L. c. 21E and the MCP.

4. Reservations of Rights

The Brownfields Covenant Not to Sue shall not apply to the following:

- a. any new release of oil and/or hazardous material at, or from the Property that occurs after the date of execution of this Agreement;
- b. any release of oil and/or hazardous material which Boxer, Champion and New England, or any Subsequent Owner and/or Operator, causes or contributes to or causes to become worse than it otherwise would have been had Boxer, Champion and New England or any Subsequent Owner and/or Operator not engaged in such activities;
- c. any release of oil and/or hazardous material at the Property that has not been discovered as of the time of submittal of the RAOs to DEP that could have been discovered had an assessment of the Property covered by or addressed in the RAOs been performed consistent with the Standard of Care, in effect as of the time of submittal of the RAOs;
- d. any release or threat of release of oil and/or hazardous material from which there is a new exposure that results from any action or failure to act pursuant to G.L. 21E during Boxer, Champion and New England's or Subsequent Owners' and/or Operators' ownership or operation of the Property; and
- e. any release of oil and/or hazardous material not expressly described in Section IV, Paragraph B, subparagraph 1, above.

5. Termination for Cause

a. In the event that the OAG determines that Boxer, Champion and New England submitted materially false or misleading information as part of its Application to Enter into a Brownfields Covenant Not to Sue Agreement, the OAG may terminate the liability protection offered by this Agreement in accordance with subparagraph 5.d. of this Section IV, below. A statement made by Boxer, Champion and New England regarding the anticipated benefits or impacts of the proposed project will not be considered false or misleading for purposes of this subparagraph, if such statement was asserted in good faith at the time it was made.

b. In the event that the OAG determines that Boxer, Champion and New England or a Subsequent Owner and/or Operator has violated the terms and conditions of this Agreement, the OAG may terminate the liability protection offered by this Agreement in accordance with subparagraph 5.c., below. In the event that the liability protection is terminated solely because of a violation of one or more of the conditions of this Agreement by a Subsequent Owner and/or Operator, such termination shall affect the liability protection applicable only to such Subsequent Owner and/or Operator.

c. Before terminating the liability relief provided by this Agreement, the OAG will provide Boxer, Champion and New England or a Subsequent Owner and/or Operator, as appropriate, written notice of the proposed basis for, and a 60-day opportunity to comment on, the proposed termination. In the sole discretion of the OAG, such notice may provide a reasonable period of time for Boxer, Champion and New England or Subsequent Owner and/or Operator, as appropriate, to cure an ongoing violation, in which case the OAG will not terminate the liability relief provided by this Agreement.

d. Termination of liability relief pursuant to this section shall not affect any defense that Boxer, Champion and New England or Subsequent Owner and/or Operator might otherwise have pursuant to any provision of law, including G.L. c. 21E and the common law.

C. COVENANT NOT TO SUE BY BOXER, CHAMPION AND NEW ENGLAND OR SUBSEQUENT OWNER AND/OR OPERATOR

In consideration of the Brownfields Covenant Not to Sue in Section IV, Paragraph B of this Agreement, Boxer, Champion and New England or a Subsequent Owner and/or Operator hereby covenants not to sue and not to assert any claims or causes of action against the Commonwealth, including any department, agency, or instrumentality, and its authorized officers, employees, or representatives with respect to the Property or this Agreement, including but not limited to:

1. any direct or indirect claims for reimbursement, recovery, injunctive relief,

contribution or equitable share of response costs or for property damage pursuant to G.L. c. 21E;

2. any claims under the Fifth Amendment to the United States Constitution or under the Massachusetts Constitution for "takings";

3. any claims arising out of response actions at the Property, including claims based on DEP's selection of response actions, oversight of response actions, or approval of plans for such activities;

4. any claims or causes of action for interference with contracts, business relations or economic advantage; or

5. any claims for costs, attorneys fees, other fees or expenses incurred.

D. CONTRIBUTION PROTECTION AND RIGHTS OF AFFECTED THIRD PARTIES

With regard to claims for contribution, cost recovery or equitable share brought by third parties pursuant to G.L. c. 21E, §§ 4 and 5, or third party claims brought pursuant to G.L. c. 21E for property damage claims under common law or G.L. c. 21E, § 5, against Boxer, Champion and New England or Subsequent Owner and/or Operator, based solely on Boxer, Champion and New England's or Subsequent Owner's and/or Operator's status as owner or operator of the Property, the Commonwealth and Boxer, Champion and New England agree that Boxer, Champion and New England or Subsequent Owner and/or Operator are entitled to such protection from such contribution claims as provided by G.L. c. 21E for the Matters Addressed at the Property Addressed; provided, however:

1. that Boxer, Champion and New England has satisfied the notification provisions of G.L. c. 21E, § 3A(j)(3) and 940 CMR 23.06(1);

2. that the OAG has made its determination regarding the nature and extent of the opportunity that Affected Third Parties will have to join this Agreement pursuant to 940 CMR 23.06(3); and

3. that the OAG has provided Affected Third Parties an appropriate opportunity to join this Agreement pursuant to 940 CMR 23.06(2) and (3).

E. GENERAL PROVISIONS

1. This Agreement may be modified only upon the written consent of all Parties.

2. Should any term or condition of this Agreement or its application to any

person or circumstance be found to be unenforceable by any court of competent jurisdiction, the remainder of this Agreement shall not be affected and each remaining term and provision shall be valid and enforceable to the full extent permitted by law.

3. Each Party warrants and represents to the others that it has the authority to enter into this Agreement and to carry out its terms and conditions.

4. This Agreement may be fully executed by all Parties in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

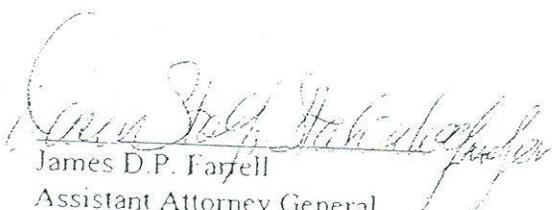
5. The terms of this Agreement in Section IV, Paragraph B, subparagraph 1, with respect to the Covenant Not to Sue and Section IV, Paragraph D, with respect to the Contribution Protection and Rights of Affected Third Parties, shall be effective as of the date the OAG executes this Agreement, subject to the conditions contained herein.

IT IS SO AGREED:

OFFICE OF THE ATTORNEY GENERAL

BOXER REALTY REDEVELOPMENT,
LLC, CHAMPION CITY RECOVERY,
LLC, NEW ENGLAND WASTE, LLC

BY:


James D.P. Farrell
Assistant Attorney General
Brownfields Unit Chief
Environmental Protection Division
Office of the Attorney General
200 Portland Street
Boston, MA 02114

BY:


Newman, LLC
Gordon Reger, Manager
Authorized Person
2730 Transit Road
West Seneca, NY 14224

Date:

August 8, 2002

Date: August 8, 2002

In the matter of Boxer Realty Redevelopment, LLC, Champion City Recovery, LLC and New
England Waste, LLC
Brownfields Covenant Not to Sue

EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS

BY: 
Robert Durand
Secretary
Executive Office of Environmental
Affairs
Commonwealth of Massachusetts

Date: 8/7/02

In the matter of Boxer Realty Redevelopment, LLC, Champion City Recovery, LLC and New
England Waste, LLC
Brownfields Covenant Not to Sue

EXHIBIT 1

Client: Champlon City Recovery LLC
JKH Job #01-504-1

PARCEL 1 (PERIMETER)

Beginning at a point in the southwest corner of said parcel, said point being on the easterly sideline of Means Avenue.

Thence, by said easterly sideline of Means Avenue, N 27°23' 30" W, a distance of 527.37 feet to a point;

Thence, by land N/F of the Town of Avon N 61° 52' 30" E, a distance of 266.18 feet to a point;

Thence, again, by land N/F of the Town of Avon N 68° 02' 00" E, a distance of 58.71 feet to a point;

Thence, again by land N/F of the Town of Avon N 60° 52' 00" E, a distance of 109.50 feet to a point;

Thence, again by land N/F of Town of Avon, N 60° 56' 30" E, a distance of 511.56 feet to a point on the westerly sideline of the Old Colony Railroad

Thence, by said westerly sideline of the Old Colony Railroad S 09°45'30" E, a distance of 620.48 feet to a point;

Thence, by land N/F of CDA Realty Trust, S 82° 14' 30" W, a distance of 377.40 feet to a point;

Thence, again, by land N/F of CDA Realty Trust S 59° 50' 56" E, a distance of 70.23 feet to a point;

Thence, again, by land N/F of CDA Realty Trust, S 61°, 44' 12" W, a distance of 415.00 feet to the point of beginning.

Said parcel containing 10.26 ± acres

Client: Champion City Recovery LLC
JKH Job #01-504-1

PARCEL 2

Beginning at a point in the southeast corner of described parcel, said point being the northwesterly intersection of Means Avenue and Augustine Street.

Thence, by the northerly line of said Augustine Street S 61° 44' 12" W, a distance of 120.00 feet to a point;

Thence, by lands N/F of William A. Cole N 27° 23' 30" W, a distance of 168.00 feet to a point.

Thence, by land N/F of Hilde Blyzniuk and land N/F of Matthew Kiley N 61° 44' 12" E, a distance of 120.00 feet to a point on the westerly sideline of said Means Avenue.

Thence, by said westerly sideline of Means Avenue S 27° 23' 30" E, a distance of 168.00 feet to the point of beginning having an area of 20,160± square feet.

Parcel being shown as Plot 6 on Brockton Assessor's Map 101

Client: Champion City Recovery LLC
JKH Job #01-504-1

PARCEL 3 (COMMITTED LEASE AREA)

Beginning at a point on the northeast corner of the described premises, said point being on the westerly sideline of the Old Colony Railroad.

Thence, again by land N/F of Old Colony Railroad in a southerly direction, a distance of 330± feet to a point;

Thence, by land N/F of Automotive Designs Inc in a westerly direction, a distance of 78± feet to a point;

Thence, in a northerly direction 266± feet to a point;

Thence, in a northwesterly direction 58± feet to a point;

Thence, in a westerly direction 517± feet to a point;

The last three (3) courses being by land N/F of CDA Realty Trust;

Thence, by land N/F of CDA Realty Trust and Augustine Street in a northerly direction 66± feet to a point;

Thence, in an easterly direction 415± feet to a point;

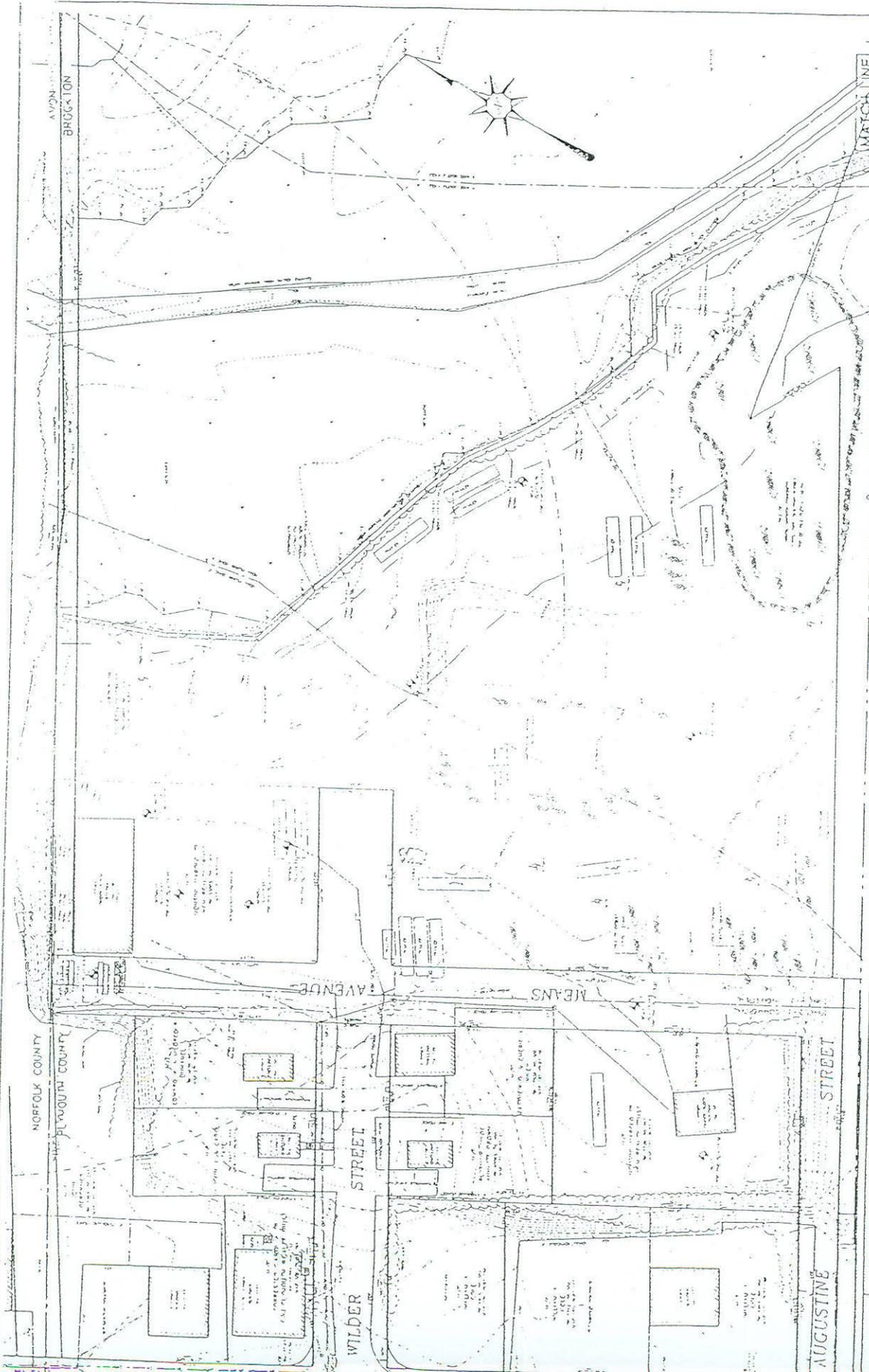
Thence, in a northwesterly direction 70± feet to a point;

Thence, in an easterly direction 377± feet to the point of beginning. The last three (3) courses being by land N/F of Harold Monsini Tr. Said lease area = 2.047± acres

Said lot being shown on a plan entitled "Committed Lease Area Plan for CDA Trust, prepared for Champion City Recovery LLC, location is 138 Wilder Street Ext., Brockton, Massachusetts, dated November 30, 2000."

In the matter of Boxer Realty Redevelopment, LLC, Champion City Recovery, LLC and New
England Waste, LLC
Brownfields Covenant Not to Sue

EXHIBIT 2



SHEET NUMBER
MBTA-3

DATE	BY
PROJECT	SCALE
DATE	BY
PROJECT	SCALE
DATE	BY
PROJECT	SCALE



MASSACHUSETTS BAY
TRANSPORTATION AUTHORITY
TRANSIT OPERATIONS, PLANNING AND MAINTENANCE

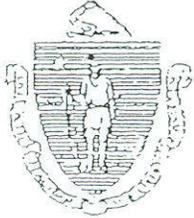
EXISTING CONDITIONS PLAN
CHAMPION CITY RECOVERY LLC
138 WILDER STREET EXT
BROCKTON, MASSACHUSETTS

ALPHA KEYSTONE ENGINEERING
P.O. Box 1919
100 State Street, Brockton, MA 01909
Phone: (508) 301-9111 Fax: (508) 301-1143
Email: alpha@alphakey.com



In the matter of Boxer Realty Redevelopment, LLC, Champion City Recovery, LLC and New
England Waste, LLC
Brownfields Covenant Not to Sue

EXHIBIT 3



COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
SOUTHEAST REGIONAL OFFICE
20 RIVERSIDE DRIVE, LAKEVILLE, MA 02347

JANE SWIFT
Governor

BOB DURAND
Secretary

LAUREN A. LISS
Commissioner

June 7, 2002

Mr. Jack Walsh
Champion City Recovery, LLC
1093 North Montello Street
Brockton, Massachusetts 02301

RE FINAL PERMIT DECISION
APPLICATION FOR BWFSW05
AUTHORIZATION TO CONSTRUCT
CONSTRUCTION AND DEMOLITION DEBRIS TRANSFER FACILITY

RE Champion City Recovery, LLC
138 Wilder Street
Brockton, MA

Transmittal Number: W023641

Dear Mr. Walsh:

The Department of Environmental Protection, Solid Waste Management Section (the "Department") has completed its Technical Review of the permit application listed above and determined that the application is technically complete and hereby approves the application subject to the conditions herein. The Application was submitted on behalf of Champion City Recovery, LLC ("Champion City Recovery" or the "Applicant") by their consultant, J.K. Holmgren & Associates, Inc. and received at the Department on May 20, 2002. The Department reviewed the Application under the provisions of 310 CMR 19.000, Solid Waste Management Regulations. Champion City Recovery, LLC proposes to construct a 1,000 ton-per-day ("tpd") Construction and Demolition Material ("C&D") handling facility ("Handling Facility"). The Application consists of the document entitled

"CHAMPION CITY RECOVERY, LLC
138 WILDER STREET, BROCKTON, MA 02301

On November 15, 2002, the Department issued a Determination of Administrative Completeness for the Application and on December 12, 2001, the Department issued a Request for Additional Information. On January 30, 2002, the Department received supplemental information to the Application.

The Application also originally included two variance requests as allowed by CMR 19.080. In accordance with the requirements of 310 CMR 19.080, Champion City Recovery mailed copies of the variance requests to the Regional Director of the Department's Southeast Regional Office, the Board of Health, and to abutters of the property on October 2, 2001. Within Champion City Recovery's January 29, 2002, response to comments, the Department received an Abutters Information Report prepared by the City of Brockton and Certified Mail Receipts for each abutter. On February 25, 2002, the Department's Southeast Office Regional Director issued an approval of one variance request which allowed solid waste materials handling within 100-feet of the southern property line. Within its variance request, Champion City Recovery submitted a letter from the abutting southern property owner directly affected by the variance request stating no objections to the proposed variance. Champion City Recovery withdrew the variance request regarding the northern property line and, accordingly, it was not approved by the Department. There will be no storage of full rail cars within 100 feet of the facility northern property line or within the Zone 1 of the Town of Avon's active wells.

The Town of Avon filed for an adjudicatory hearing on March 15, 2002, regarding the Department's decision. On May 17, 2002, Mochike, Mackie & Shea, PC submitted correspondence on behalf of Champion City Recovery regarding the variance request, the Department's approval and Avon's request for an adjudicatory hearing. This correspondence included submittal of a copy of a Commercial Lease agreement entered into by Champion City Recovery, LLC and Philip D'Angelo, Trustee of CDA Realty Trust. This agreement demonstrated, to the satisfaction of the Department, that Champion City Recovery has a ninety-nine (99) year lease, with first right of refusal regarding purchase, for CDA Realty Trust property located within 100-feet of the waste handling building. The Department has determined that the prior variance request and approval are no longer required. Materials handling will be allowed within the waste transfer building. Waste materials storage will not be allowed in rail cars on the rail spur between the transfer building and the southern property line.

On February 27, 2002, the Department issued a Draft Permit for the facility, which required the Applicant to publish Public Notice of the Draft Permit. Notice of the Draft Permit was published in the Brockton Enterprise on March 1, 2002, and the Department accepted public comments until April 1, 2002. On April 24, 2002, and May 10, 2002, Champion City Recovery submitted supplemental application information. The April 24, 2002 submittal included written responses to public comments with backup documentation. The May 10, 2002 submittal included a traffic study report prepared by Rizzo Associates regarding traffic at two additional intersections as requested in public comments. The traffic study concluded that the facility would not adversely impact traffic at these locations. A summary of public comments and responses to these comments and commitments are included as an attachment to this permit approval.

rubble, debris, rock, and other soil material over peat areas. The fill material was typically encountered between ground level and six (6) feet below ground level. Champion City Recovery states that the material appears to have been placed between 1960 and 1980 and there is little potential for any significant settlement to occur in the future. Champion City Recovery plans to remove and dispose of approximately 7,500 tons of these materials to facilitate construction of a low permeability cover system over the remaining material. In conjunction with this Authorization to Construct Permit application, Champion City Recovery has applied for authorization to construct an environmentally sound final cover system over these materials (BWP SW 25, Corrective Action Design, Transmittal #W028253). This application is currently under review in conjunction with continued site assessment.

Champion City Recovery is also currently performing a comprehensive assessment of the facility site and has submitted a Comprehensive Site Assessment (BWP SW 23, Comprehensive Site Assessment, Transmittal #W0228325). Based on its review of the assessment work performed to date, the Department has determined that there is no evidence of existing environmental impact that would preclude construction of the Handling Facility. The Department has also determined that the Handling Facility construction will not preclude remediation of the site should impacts be determined in the future. Additional assessment and environmental monitoring will be performed during site cleanup, during final cover construction, during facility construction, and during facility operation.

The site also currently contains various piles of building material, lumber, blocks, brick, and metal, as well as old construction equipment, several storage trailers and small buildings. Historically, the site operated as a wood waste processing facility, grinding demolition wood to a particle size less than three inches, which further decomposed over time into "fines" material. Currently approximately 3,500 tons of fines are stockpiled on site. In addition, a larger pile of approximately 4,000 tons of wood waste material is stockpiled on site. Condition 5 of this permit requires the removal and proper reuse or disposal of all these materials.

Construction of the Handling Facility is intrinsically linked to the site cleanup and the construction of the final cover system over areas containing historic fill materials. Champion City Recovery states that, upon receipt of an Authorization to Construct permit from the Department, they will be in position to purchase the facility site enabling commencement of site cleanup and construction activities. Initial construction will be limited to activities, which are not affected by the required final cover construction, such as the rail bridge and detention basin construction and wetlands replication.

Proper sequencing of activities requires that the majority of the site cleanup, including removal of the waste stockpiles, miscellaneous construction equipment, and the top surface of historical fill materials, occur prior to final cover construction and Handling Facility construction. Site cleanup will facilitate performance of construction activities and allow additional site investigation for refinement of construction details of the final cover system. Accordingly, the Department is approving the waste handling facility Authorization to Construct permit at this time, enabling Champion City Recovery to purchase the property, while limiting the extent of approved construction activities. Approval of additional elements of facility construction will be

Facility Permits

MEPA

The project was originally proposed by Northeastern Recycling Services Inc. and consisted of the construction and operation of a 78,000 square foot building for the receipt and processing of 1,500 tons of wood waste from pre-sorted construction and demolition debris. On February 27, 1995, a Final Environmental Impact Report was submitted to the Massachusetts Environmental Policy Act (MEPA) office and a certificate indicating compliance with MEPA regulations was issued on April 25, 1995.

Northeastern Recycling Services and the property at 138 Wilder Street, Brockton is under agreement to be purchased by Champion City Recovery, LLC, a subsidiary of New England Waste, LLC, of West Seneca, NY. A Notice of Project Change (NPC) was filed with MEPA on March 12, 2001. The NPC included changing the name of the facility to Champion City Recovery, LLC, reducing daily throughput from 1,500 tons to 1,000 tons per day, changing operations to a C&D transfer station, rather than a processing facility, reducing the transfer building size from 78,000 square feet to 20,000 square feet and incorporating rail transport as the primary mode for shipment of C&D off-site.

The NPC request appeared in the Environmental Monitor on March 24, 2001. On April 25, 2001, a Certificate of the Secretary of Environmental Affairs on the Notice of Project Change was issued stating that no further MEPA review is necessary.

Site Assignment

A BWP SW 01 site suitability application was submitted on February 28, 2001, by J K Holmgren & Associates, Inc. on behalf of Champion City Recovery. The Department issued a positive Report on Site Suitability and assigned transmittal #044-002-A on July 13, 2001.

The Board of Health of the City of Brockton (BOH) held a public hearing regarding the site assignment application on September 6, 2001. At its meeting held on October 2, 2001, the BOH voted unanimously to grant the application of Champion City Recovery for a 1000 ton per day transfer station for construction and demolition debris. The BOH tempered its decision with a series of thirty-two (32) mitigation measures appended to the decision as Exhibit A. The BOH approval requires that Champion City Recovery commit to these mitigation measures.

Facility Proposal

Champion City Recovery proposes to construct, operate, and maintain a 1,000 ton per day C&D transfer facility with associated parking and roadways at 138 Wilder Street in Brockton, Massachusetts. The area is zoned as industrial area (I-2 zoning) and is set back such that

measures 200' x 100'. Loading bays are provided at the eastern and western sides of the building, leaving 17,000 square feet of tipping floor space.

The facility administrative offices are to be located at the scale house, immediately northwest of the transfer building. An existing single-story block maintenance building located at the northern end of the property will be removed. Scales are to be located inside the main gate (at the easternmost end of Wilder Street) and will be used to weigh all incoming and outgoing loads. This site will feature a comprehensive storm water management system and new utilities.

The facility will have a two-way traffic pattern. Vehicles will enter the facility via Wilder Street from Route 28. On-site access roads will be paved and designed to accommodate heavy vehicles. The scale house operator will monitor incoming vehicles and direct vehicles onto the entry scale and then to the inspection area of tipping floor. C&D includes but is not limited to concrete, bricks, lumber, masonry, road paving materials, rebar, and plaster. All loads will be inspected during tipping for unacceptable materials. Once wastes are deemed acceptable and deposited on the tipping floor, operating personnel will remove recyclable wood, metals, and cardboard, in accordance with a Department approved waste ban plan and ship these recyclables to appropriate recycling facilities for further processing. The remaining material will then be demolished with bulldozer-type equipment and loaded into company owned railcars for transport off site to approved disposal facilities. No grinding, chipping, or fines screening is proposed at the facility.

The project includes construction of a railroad spur that will provide access to the CSX Transportation (CSXT) freight service, which operates on the existing MBTA commuter rail. The primary mode of shipment of waste off-site will be by rail. Open top, watertight, gondola-type railcars will be loaded inside the buildings eastern loading bay. Live floor-type highway trailers will be utilized as a backup to railcars, and will be loaded in the western loading bay. Full rail cars will be covered and stored on track areas outside the Zone 1 of the Town of Avon's active wells and outside the 100 foot property line buffer zones.

A traffic study has been prepared for the project by Rizzo Associates. The focus of the study was the intersections of Wilder Street and North Montello (Route 28), and Harrison Boulevard and Memorial Drive (Route 28). The conclusion of the study indicates that the project will not create any roadway capacity deficiencies. Champion City Recovery is incorporating improvements to Wilder Street as part of the overall development. The street will be repaved and widened to facilitate improved traffic flow and exiting onto Route 28. A supplemental traffic study by Rizzo Associates evaluated the intersection of Harrison Boulevard with Pond Street and the intersection of Harrison Boulevard with West Main Street. The supplemental study also indicated that the project will not create roadway capacity deficiencies at these additional study locations.

The proposed facility is subject to a Level I Quantitative Risk Evaluation. This evaluation is based on the facility type and size, the extent to which enhanced Best Management Practices, including retrofit of on-site diesel equipment are proposed, the type of land uses impacted by the facility, VOC emissions from other point sources within a mile of the propose facility, and any

has developed and committed to a series of Best Management Practices to be implemented during facility construction and operation to minimize and mitigate potential nuisance conditions.

Noise will be controlled by conducting all tipping, loading, sorting operations inside a new, 20,000 square foot building. No grinding or shredding operations will occur on site. Equipment will be maintained pursuant to manufacturers' recommendations. Champion City Recovery will conduct noise studies both before and after operations commence. Condition 11 of this permit approval requires submittal and approval a noise study protocol.

Dust will be controlled within the transfer building by using a ceiling mounted dust suppression (misting) system. Champion City Recovery has committed to refusing delivery of excessively dusty loads. Outside the transfer building, dust will be controlled through the use of fully paved access roads and driveways, and by using a municipal type street sweeper on a regular basis. Champion City Recovery will ensure that all incoming loads are covered. Operating personnel will provide for the routine maintenance and general cleanliness of the site. Routine housekeeping will be a normal part of daily operations. These duties will include regular sweeping, litter patrols, and other housekeeping projects as necessary to ensure a well maintained work environment.

All permanently assigned diesel equipment on site will use low emission diesel powered equipment (oxidation catalyst retrofit). Champion City Recovery will implement and enforce a five-minute maximum idling rule for site equipment and for private haulers who visit the site.

A storm water management system will be constructed consisting of ten interconnected catch basins, one 6,000 gallon, and one 8,000-gallon oil/water separator, drain manholes, and detention basins to collect and treat storm water runoff. The storm water collection system will discharge to a storm water quality swale with a sediment forebay, then flow to an extended detention basin and finally discharge to an existing wetland system. The detention basins will be lined with a 40-mil geomembrane and are sized to store the excess runoff from the 100-year storm. The proposed storm water management system is designed to maintain post-development peak rates of run-off below pre-development peak rates of run-off. Champion City Recovery submitted a Notice of Intent to the Brockton Conservation Commission on December 1, 2000 and received an Order of Conditions on May 1, 2001. The Order of Conditions stipulates actions required to be performed by Champion City Recovery during construction and operation of the facility relating to wetlands protection and stormwater control.

Champion City Recovery proposes to construct the transfer building within thirty-eight (38) feet of the southern property line. The proposed transfer building is within the 100-foot property line setback established by the Department. Champion City Recovery originally requested a variance from the 100-foot setback and submitted a letter from the abutting southern property owner directly affected by the variance request stating no objections to the proposed variance. Champion City Recovery has more recently provided a copy of a lease agreement with the abutting property owner on the southern side of the site. Based on the terms of this lease agreement, the variance request and its approval are not required.

Champion City Recovery will be required to submit an application for Authorization to Operate. This application must demonstrate that the facility has been constructed in compliance with the Authorization to Construct permit and contain a Financial Assurance Mechanism and a final Operations and Maintenance Manual for review and approval.

Approval with Conditions

As a result of its review, the Department has determined that the application is satisfactory and in accordance with the authority granted pursuant to M.G.L., C. 111, §150A hereby approves the proposal subject to the following conditions:

1. Construction: All construction shall be in accordance with the Application and supplemental Application information submitted, the Brockton Board of Health Decision on the site assignment, the Brockton Conservation Commission Order of Conditions, this permit, and all applicable requirements of 310 CMR 16.00 Site Assignment Regulations for Solid Waste Facilities and 310 CMR 19.000 Solid Waste Management regulations, unless otherwise modified by this permit. The Department shall be consulted prior to any deviations from the approved design. The Department may require a permit modification application for any proposed design modifications.

Pursuant to Condition 6 below, the Department has limited the construction activities approved at this time and may require construction modifications based on review of the final cover design and continued on site assessment during site clean up.

2. Notification: The Department shall be notified in writing when construction commences. The notification shall include an estimated time to completion.
3. Erosion and Sedimentation Controls: Adequate erosion and sedimentation controls shall be implemented prior to construction and maintained throughout construction. Champion City Recovery shall comply with all elements of the Brockton Conservation Commission Order of Conditions.
4. Nuisance Conditions: Facility construction shall not create problems with vectors, odors, dust, litter, noise or other nuisance conditions. Measures shall be undertaken immediately to mitigate any potential impacts from nuisance conditions and construction activities shall be modified to prevent these conditions from reoccurring.
5. Existing Waste Materials On Site: All materials stockpiled on the project site, including processed wood, "fines", various piles of building material, lumber, blocks, brick, and metal, as well as old construction equipment, several storage trailers and small buildings, must be removed for proper disposal in a permitted disposal facility, recycled, or re-used in accordance with the Department's regulations and policies.

6. Final Cover System Construction: After completion of removal of existing historical fill scheduled to be removed at the project site, Champion City Recovery shall construct a

currently under review by the Department. Champion City Recovery shall not construct any elements of the final cover system until the Department issues a final approval of the final cover system.

Champion City Recovery shall not construct any element of the Handling Facility that first requires construction of the final cover system. Handling Facility construction shall be limited to activities such as the rail bridge and detention basin construction and wetlands replication. Champion City recovery may remove historic fill materials in preparation of final construction. These materials shall be properly disposal in a permitted disposal facility, or re-used in accordance with the Department's regulations and policies.

Champion City shall incorporate any changes to the Handling Facility construction deemed necessary by the Department based on review of the final cover design and continued on-site investigation during site clean-up.

7. Completion of Construction: Upon completion of construction, a Construction Certification Report must be submitted by a registered professional engineer certifying that construction was completed in accordance with the approved design and the requirements of this permit.

An application to the Department requesting an Authorization to Operate (ATO) permit shall be submitted in accordance with 310 CMR 19.042 for the Facility and approved prior to facility operation. When issued, the Authorization to Operate permit will be valid for a period of five (5) years and may be renewed upon written request pursuant to 310 CMR 19.042(4).

When permitted for operation, the facility must operate in accordance with the Department's authorization approval, the facility Operations and Maintenance Manual, the Brockton Board of Health Decision on site assignment, the Brockton Conservation Commission Order of Conditions, and the Department's regulations and policies.

8. Record Notice: Pursuant to 310 CMR 19.041, notification that a permit has been issued for construction of a solid waste management facility at this site shall be recorded in the Registry of Deeds. A copy of this notification shall be forwarded to the Department within the Authorization to Operate Permit Application.
9. Financial Assurance Mechanism: Prior to and during operation, Champion City Recovery shall establish or obtain, and continuously maintain a Financial Assurance Mechanism for the Facility in an amount approved by the Department. Champion City Recovery shall meet financial assurance obligation by using any of the approved methods authorized in 310 CMR 19.051 and shall file with the Department and maintain in current form approved documents constituting or evidencing compliance with this obligation. An approved financial assurance mechanism shall be in full effect on or before the date an

- 10 Local, State, and Federal Requirements: Champion City Recovery shall fully comply with all applicable local, state and federal laws, regulations and policies, by-laws, ordinances and agreements. Applicable federal regulations include, but are not limited to, 29 CFR Part 1910, OSHA standards governing employee health and safety in the workplace.
- 11 Noise Study Protocol: Champion City Recovery will provide noise study reports for local conditions both before and after facility operations commence. Prior to commencement of the noise studies, Champion City Recovery must submit for the Department's approval a detailed protocol. The protocol may be submitted as part of, or prior to, the Authorization to Operate Application. The pre-operational study and report must be completed prior to commencement of operation.

Appeal

The permit has been issued pursuant to Chapter III, Section 150 A of the Massachusetts General Laws. Any person(s) aggrieved by the issuance of this permit, except as provided for under 310 CMR 19.037(4)(b), may file an appeal for judicial review of this decision in accordance with the provisions of M.G.L. Chapter III, Section 150A and Chapter 30A. An appeal must be commenced no later than thirty (30) days from the date of this notice. The standing of a person to appeal and the procedures for filing such an appeal shall be governed by M.G.L. Chapter 30A. If the person requesting an appeal requests and is granted a stay of the terms and conditions of the permit by a court of competent jurisdiction, the permit decision shall remain effective. Any aggrieved person intending to file an appeal for judicial review shall provide Notice of Action pursuant to 310 CMR 19.037(5)(b). In the event of an appeal, the Department reserves the right to reopen the permit proceedings, supplement the record and modify the decision.

Should you have any questions regarding this issue please contact me at (508) 946-2883 or Dan Conrick at (508) 946-2884, or at the letterhead address. In any correspondence regarding this permit, refer to Transmittal Number W023641.

Very truly yours,



David B. Ellis, Chief
Solid Waste Management Section

E/DC/r

Attachments

cc: Office of the Mayor
Brockton City Hall

Brockton Health Department
45 School Street

cc: Mr. Charles Logan
Councillor Ward 7
45 School Street
Brockton, MA 02301

Brockton Conservation Commission
45 School Street
Brockton, MA 02301

Avon Board of Selectmen
Town Offices
65 Main Street
Avon, MA 02322

Avon Board of Health
Town Offices
65 Main Street
Avon, MA 02322

Avon Water Department
Town Offices
65 Main Street
Avon, MA 02322

Holbrook Board of Health
Town Hall
Holbrook, MA 02343

J.K. Holmgren & Associates, Inc.
1308 Belmont Street
Brockton, MA 02301
ATTN: J. Holmgren

State Senator Brian Joyce
Mass. State House
Room 413A
Boston, MA 02133

State Representative Calvin
Mass. State House
Room 238
Boston, MA 02133

DEP-Boston
ATTN: J. Doucett

